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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/721,721	11/25/2003	Martin Kappes	633-034us	5762
47912	7590	08/25/2009		
Avaya			EXAMINER	
DEMONT & BREYER, LLC			BIAGINI CHRISTOPHER D	
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HOLMDEL, NJ 07733				
			ART UNIT	PAPER NUMBER
			2442	
			NOTIFICATION DATE	DELIVERY MODE
			08/25/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docketing@dblaw.com

Office Action Summary

Application No.

10/721,721

Applicant(s)

KAPPES ET AL.

Examiner

Christopher Biagini

Art Unit

2442

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 June 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-5,7-11 and 13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-5,7-11 and 13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

Applicant's arguments with respect to the rejection(s) of claim(s) 1, 3-5, 7-11, and 13 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1, 3-5, 7, and 8 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Although the claims recite a series of steps or acts to be performed, a statutory "process" under 35 U.S.C. 101 must (1) be tied to a particular machine or (2) transform underlying subject matter (such as an article or material) to a different state or thing. See p. 10 of *In re Bilski*, 545 F.3d 943, 88 U.S.P.Q.2d 1385 (Fed. Cir. 2008).

Regarding the first prong of the test, the claims are not tied to a particular machine. The claims as a whole are directed to a method for examining the state of a device, and are broad enough to encompass the method being performed by a person.

Regarding the second prong of the test, the claims clearly do not transform underlying subject matter to a different state or thing. Rather, the claims merely examine the state of a device.

Thus, because the claims are not tied to a particular machine and do not transform underlying subject matter, the claims do not meet the requirements of 35 U.S.C. 101.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3, 5, 8, 9, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Freund (US Pub. No. 2003/0167405) in view of Hoene (US Pub. No. 2002/0199116).

Regarding claim 1, Freund shows determining if a device was previously connected to an untrusted network (for example, determining that the device was not previously connected to the network, and that the network is therefore “new” and should be labeled untrusted; or recognizing that the device was previously connected to the untrusted network and that it should remain untrusted: see [0074] and [0092]-[0097]).

Freund does not explicitly show evaluating the integrity of some of the data on the device when the device was previously connected to the untrusted network.

Hoene shows evaluating the integrity of some of the data on a device (comprising performing a virus scan) when the device was previously connected to an untrusted network (note that Hoene contemplates performing a virus scan in every situation, including when the device was previously connected to an untrusted network: see [0027]-[0030]).

It would have been obvious to one of ordinary skill at the time of the invention to modify the system of Freund with the data integrity check taught by Hoene in order to prevent infected devices from gaining access to a network.

Regarding claim 3, the combination further shows wherein determining further comprises determining if the device connected to at least one unknown network (for example, determining that the device has not connected to the unknown network: see Freund, [0092]-[0097]).

Regarding claim 5, the combination further shows wherein determining further comprises logging an address of each network that the device connected to (see Freund, [0074] and [0078]-[0093]).

Regarding claim 8, the combination further shows wherein evaluating comprises performing a virus scan (see Hoene, [0027]-[0030]).

Claims 9 and 11 are apparatus claims which correspond to claims 1 and 5 and are rejected for the reasons given above.

Claims 4 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Freund (US Pub. No. 2003/0167405) in view of Hoene (US Pub. No. 2002/0199116), and further in view of Noguchi (US Pub. No. 2003/0005333).

Regarding claim 4, the combination shows the limitations of claim 1 as applied above, but does not explicitly show wherein determining further comprises determining if a token on the device has been altered.

Noguchi shows determining if a token on a device has been altered (see [0019]-[0020]).

It would have been obvious to one of ordinary skill to further modify the system of Freund with the token authorization and alteration detection taught by Noguchi in order to prevent clients with forged credentials from gaining access to the network.

Claim 10 corresponds to claim 4 and is rejected for the same reasons as given above.

Claims 7 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Freund (US Pub. No. 2003/0167405) in view of Hoene (US Pub. No. 2002/0199116), and further in view of Daenen (US Pub. No. 2003/0140151).

Regarding claim 7, the combination shows the limitations of claim 1 as applied above, but does not show wherein the scope of the evaluation is based on one or more defined content authentication rules.

Daenen shows wherein the scope of an evaluating step is based on one or more defined content authentication rules (the scope comprising how many and which servers are involved in authentication: see [0041]).

It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the system of Freund with the content authentication rules of Daenen in order to easily define and enforce network policies (see [0033]).

Claim 13 is an apparatus claim corresponding to claim 7 and is rejected for the same reasons as given above.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher Biagini whose telephone number is (571) 272-9743. The examiner can normally be reached on weekdays from 8:30 AM to 5:00 PM..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Caldwell can be reached on (571) 272-3868. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Andrew Caldwell/
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2442

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